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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,193	01/16/2002	Norman Huner	P05147USO	2932

22885 7590 07/29/2003

MCKEE, VOORHEES & SEASE, P.L.C.  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES, IA 50309-2721

EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/830,193

Applicant(s)  
HUNER ET AL.

Examiner  
SHELLEY A. DODSON

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on PRELIMINARY AMENDMENT FILED 05/16/2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-19 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

Claims 1-19 are pending in this application filed 01/16/2002.

Applicant's claims are directed toward solar radiation protection composition.

**RESTRICTION REQUIREMENT**

15.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, 14, and 19, drawn to sunscreen composition and cosmetic composition, classified in class 424, subclass 059.
- II. Claim 13, drawn to method of inducing a photoautotrophic cell, classified in class 435, subclass 325.
- III. Claim 15, drawn to method of producing an extract, classified in class 435, subclass 822+.
- IV. Claim 16, drawn to method of determining sunscreen activity, classified in class 42, subclass 1.17+.
- V. Claim 17, drawn to a method for photoprotection by tinting eye wear lens and windows, classified in class 427, subclass 126+.
- VI. Claim 18, drawn to method of reducing degradation of a chemical, classified in class 585, subclass various subclasses.

16.

The inventions are distinct, each from the other because:

Inventions I through VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, or they have different modes of operation, or they have different functions, or they have different effects. (MPEP § 806.04, MPEP § 808.01).

17.

This application contains claims directed to the following patentably distinct species of the claimed invention: carotenoids, scytonemin and mycosporine amino acids.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

18.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

19.

A telephone call was made to Heidi S. Nebel on June 23, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

20.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

21.

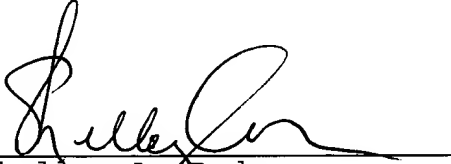
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (703) 308-2445. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7922. A facsimile center has been established in Crystal Mall 1, Room 7C11. The hours of operation are Monday through Friday, 8:45 AM to 4:45

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PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. The Patent examining Fax Center telecopier numbers are (703) 308-7922 and (703) 308-4556. Use of the new Crystal Mall 1 Center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 109 O.G. 30 (November 15, 1989).

  
Shelley A. Dodson  
Primary Examiner  
Art Unit 1616

July 28, 2003